

**SEALED**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

MAR - 6 2019

CLERK, U.S. DISTRICT CLERK  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNESTO GUTIERREZ-MARTINEZ (1),  
[REDACTED]

Defendants.

) CAUSE NO: SA 18-CR-0722-OG

) SUPERSEDING INDICTMENT

) COUNT 1:

) 18 U.S.C. §§ 371 & 554 – Conspiracy  
) to Smuggle goods from the United  
) States

) COUNT 2:

) 18 U.S.C. §§ 924(c)(1)(A) and 924(o)  
– Conspiracy to Possess a Firearm in  
relation to a Drug Trafficking Crime

**THE GRAND JURY CHARGES:**

**COUNT ONE**

**[18 U.S.C. §§ 371 & 554]**

**Conspiracy to Smuggle Goods from the United States**

That from on or about January, 2017, and continuing until on or about May 22, 2018, in the Western District of Texas and elsewhere, the Defendants,

**ERNESTO GUTIERREZ-MARTINEZ (1), and**  
[REDACTED]

did knowingly and willfully combine, conspire, confederate and agree with each other and with others known and unknown to the grand jury to receive, conceal, buy, sell, and facilitate the transportation, concealment, and sale of merchandise, articles, and goods, knowing the goods were intended for exportation contrary to the laws and regulations of the United States; in violation of Title 18, United States Code, Sections 371 and 554.

**OVERT ACTS**

In furtherance of the conspiracy and to effect the purposes and objects thereof, numerous overt acts were committed by the defendants and others in the Western District of Texas and elsewhere. These acts include but are not limited to the following:

- (1) On or about May 5, 2018, defendant **ERNESTO GUTIERREZ-MARTINEZ (1)** entered into negotiations with an undercover police officer for the purchase of a Barret Arms .50 caliber semiautomatic rifle;
- (2) On or about May 6, 2018, defendant **ERNESTO GUTIERREZ-MARTINEZ (1)** sent [REDACTED] a copy of his text messages with the undercover agent;
- (3) On or about May 6, 2018, defendant [REDACTED] communicated to defendant **ERNESTO GUTIERREZ-MARTINEZ (1)** that “the guy” keeps bothering him about the purchase of the Barrett rifles;
- (4) On or about May 20, 2018, defendant **ERNESTO GUTIERREZ-MARTINEZ (1)** asked the undercover agent for a photo of the Barrett rifle. When the agent sent a photo of a Barrett .50 caliber rifle to him, **ERNESTO GUTIERREZ-MARTINEZ (1)** forwarded the SMS message to [REDACTED], and;
- (5) On or about May 22, 2018, defendants **ERNESTO GUTIERREZ-MARTINEZ (1)** met with undercover agents for the purpose of buying two Barrett .50 caliber rifles.

All in violation Title 18, United States Code, Sections 371 and 554.

**COUNT TWO**

**[18 U.S.C. §§ 924(c)(1)(A) & 924(o)]**

**Conspiracy to Possess a Firearm in Relation to a Drug Trafficking Crime**

That from on or about January, 2017, and continuing until on or about May 22, 2018, in the Western District of Texas and elsewhere, the Defendants,

**ERNESTO GUTIERREZ-MARTINEZ (1), and**  
**[REDACTED]**

did knowingly and willfully combine, conspire, confederate and agree with each other and with others known and unknown to the grand jury to possess a firearm in relation to a drug trafficking offense, in that they knowingly and intentionally conspired to purchase, smuggle, and deliver firearms to a drug trafficking organization that was involved in the commission of offenses punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) and the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 924(o).

**OVERT ACTS**

In furtherance of the conspiracy and to effect the purposes and objects thereof, numerous overt acts were committed by the defendants and others in the Western District of Texas and elsewhere. These acts include but are not limited to the following:

- (6) All of the overt acts as alleged in Count One of this indictment, above;
- (7) On or about February 20, 2018, defendants **ERNESTO GUTIERREZ-MARTINEZ (1)** and **[REDACTED]** discussed a newspaper article about a conflict between factions of a drug trafficking organization in Mexico. The defendants discussed how the firearms they previously provided to the drug trafficking organization should be used in the conflict;
- (8) On or about May 5, 2018, defendant **[REDACTED]** sent **ERNESTO GUTIERREZ-MARTINEZ (1)** a copy of his messages he received about

the purchase of two items;

- (9) On or about May 6, 2018, defendant [REDACTED] communicated to defendant ERNESTO GUTIERREZ-MARTINEZ (1) that “the guy” keeps bothering him about the purchase of the Barrett rifles, and;
- (10) On or about May 16, 2018, defendant ERNESTO GUTIERREZ-MARTINEZ (1) sent multiple photos of bulk quantities of .50 caliber ammunition and .50 caliber magazines to defendant [REDACTED] who responded to those photos by saying that he had sent them.

All in violation Title 18, United States Code, Sections 924(c)(1)(A) and 924(o).

**NOTICE OF UNITED STATES OF AMERICA'S DEMAND FOR FORFEITURE**  
**[See Fed. R. Crim. P. 32.2]**

**Smuggling Goods from the United States Violation and Forfeiture Statutes**  
**[Title 18 U.S.C. § 554, subject to forfeiture pursuant to Title 18 U.S.C. § 981(a)(1)(C), made applicable to criminal forfeiture by Title 28 U.S.C. § 2461]**

As a result of the foregoing criminal violations set forth above, the United States of America gives notice to the Defendants of its intent to seek the forfeiture of the property described below upon conviction pursuant to Title 18 U.S.C. § 981(a)(1)(C), (through Title 18 U.S.C. § 1956(c)(7)), made applicable to criminal forfeiture by Title 28 U.S.C. § 2461, which states:

**Title 18 U.S.C. § 981. Civil forfeiture**

**(a) (1)** The following property is subject to forfeiture to the United States:

**(C)** Any property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting “unspecified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

The offense of smuggling goods from the United States as alleged in Count One is an offense constituting “specified unlawful activity” as defined in Title 18 U.S.C. § 1956(c)(7).

Title 28 U.S.C. Section 2461(c) renders criminal forfeiture available whenever civil forfeiture is authorized.

This Notice of Demand for Forfeiture includes but is not limited to the property described below:


- **\$10,800.00, More or Less in U.S. Currency.**

A TRUE BILL.

  
FOREPERSON OF GRAND JURY

JOHN F. BASH  
United States Attorney

By:

  
CHARLES L. JENKINS  
Assistant United States Attorney